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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,843	07/16/2003	Shaun Jeffrey Hensley	005127.00349	8804

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EXAMINER

BROWN, JAYME L

ART UNIT PAPER NUMBER

1733

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/620,843		HENSLEY ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jayme L. Brown		1733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 9, 13, and 29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 14-28 and 30-41 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**FINAL ACTION**

*This is a re-mailing of the Office Action dated 10/13/05, which was inadvertently marked as Non-Final when it should have been Final.*

1. This action is in response to the amendments and arguments filed on 8/23/05. All previous rejections of the claims under 35 U.S.C. 112, second paragraph are withdrawn in light of the amendments to the claims and in view of Applicant's arguments.

***Drawings***

2. The objection to Figures 9 and 10 containing item 34' is withdrawn in light of the correction in the Specification.

***Inventorship***

3. In view of the papers filed 8/23/05, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding inventors John F. Swigart and Eric S. Schindler.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swigart (U.S. Patent 6,457,262) in view of Gasbarro (U.S. Patent 4,829,682).

Regarding claim 1, Swigart is directed to a fluid-filled chamber (bladder) for an article of footwear as depicted in Figure 3A (See Abstract). Swigart teaches that the conventional blow molding process is one method for making the bladder (Column 5, lines 25-27).

Gasbarro is an example of such a conventional blow molding process wherein a parison is positioned between first and second portions of a mold, the parison is bent to conform with the contours of the mold as the first and second portions of the mold translate toward each other, the opposite sides of the parison are shaped to form the chamber, and the opposite sides of the chamber are bonded together (Column 2, line 29 – Column 3, line 11; Figure 6). One skilled in the art would have readily appreciated making the bladder of Swigart using a conventional blow molding process would involve

Art Unit: 1733

the steps detailed in the conventional blow molding process of Gasbarro. It would have been obvious to one of ordinary skill in the art to use the conventional blow molding method exemplified in Gasbarro in the method of Swigart.

One skilled in the art would have readily appreciated that a conventional blow molding process would require the mold to correspond to the shape of the desired bladder. One skilled in the art would have readily recognized that a mold used to make the bladder depicted in Figure 3A would require the mold portions to have a cavity which would correspond to the ultimate shape of the bladder, and the contours of the mold would be outside the cavity. It would have been obvious to one of ordinary skill in the art at the time the invention was made that using a conventional blow molding process in the method of Swigart would require mold portions that have a cavity and contours positioned separate from the cavity.

Regarding claims 2-3, Swigart and Gasbarro are relied upon for the teachings above in reference to claim 1. Swigart is silent toward the mold having protrusions formed on one of the first portion and the second portion and having indentations formed in the other of the first portion and the second portion wherein the indentations are positioned to receive the protrusions and that the indentations and protrusions are separate from the areas of the mold that form the chamber. It is well known and conventional to have a mold with protrusions on one portion and indentations on the other portion wherein the indentations are positioned to receive the protrusions and that they are separate from the area of the mold that forms the chamber depicted by Swigart. One skilled in the art would readily appreciate needing a mold with an area

Art Unit: 1733

that contains indentations and protrusions to form the conduit (20, 30) parts and a different area that forms the chamber that is shown by Swigart (Figure 3A). At the time the invention was made, it would have been obvious to one of ordinary skill in the art that using the conventional blow molding process of Gasbarro in the method of Swigart would require using a mold with indentations and protrusions separate from the area that forms the chamber, since it is a conventional mold to use to form a chamber (bladder).

Regarding claim 4, it is well known and conventional that bending the parison would include extending it around the protrusions and into the indentations of the mold. One skilled in the art would readily appreciate that if a mold with indentation and protrusions is used to shape the parison, then the parison would extend into the indentations and around the protrusion. At the time of the invention, it would have been obvious that the parison would extend around the protrusions and into the indentations in the method of Swigart as modified above.

Regarding claim 5, Swigart and Gasbarro are relied upon for the teachings above in reference to claim 1. Swigart is silent toward the step of shaping including forming the chamber having a plurality of lobes that extend outward from a central area of the chamber. It is well known and conventional that a chamber could have lobes that extend outward from the central area as depicted by Swigart (Figure 3A). One skilled in the art would readily appreciate having a chamber with lobes for better fluid flow and stabilization (Swigart: Column 3, lines 38-53). At the time of the invention, it would have been obvious to one of ordinary skill in the art that using the conventional blow molding

process of Gasbarro in the method of Swigart would require having a chamber with lobes.

Regarding claim 6, it is well known and conventional that the step of shaping involves forming the chamber such that at least one surface of the chamber has a curved configuration as shown for example by Gasbarro (Figures 3 and 4).

Regarding claims 7-8 and 11, it is well known and conventional that the step of bonding includes defining a parting line between opposite sides of the parison and extending the parting line from a first surface to an opposite second surface of the chamber as shown for example by Gasbarro (Figure 2, item 17; Column 2, line 29 – Column 3, line 11).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gasbarro (U.S. Patent 4,829,682) in view of Swigart (U.S. Patent 6,457,262), as applied to claims 1-8 and 11 above, and further in view of Tawney et al. (U.S. Patent 6,571,490).

Regarding claim 10, Gasbarro and Swigart are relied upon for the teachings above in reference to claim 1. Gasbarro is silent towards a portion of the parting line being non-centrally located with respect to a first surface to an opposite second surface of the chamber. It is well known and conventional to have a non-centrally located parting line on the chamber as suggested by Tawney et al. One skilled in the art would readily appreciate having a non-centrally located parting line for aesthetic purposes and to increase the life of the chamber (bladder) by moving it away from areas of predicted

Art Unit: 1733

high stresses (Column 21, lines 7-18; Figure 49, item 450). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have a non-centrally located parting line in the method of Gasbarro, as modified above, as suggested by Tawney et al.

### ***Allowable Subject Matter***

7. Claims 12, 14-28, and 30-41 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: Regarding claims 12, 14-28, 30-31, and 41, the prior art of record fails to teach or suggest that the parting line is in a non-linear configuration wherein the term "non-linear" is understood to mean that the parting line is in a wave-like pattern and therefore not in the same plane as depicted in Figure 25. Regarding claims 32-40, the prior art of record fails to teach or suggest that in the step of shaping the parison, the first side and the second side are interlaced to form at least a portion of a sidewall of the chamber.

### ***Response to Arguments***

9. Applicant's arguments filed 8/23/05 have been fully considered but they are not persuasive. Applicant argues that Gasbarro does not teach contours that bend the parison and are positioned separate from the cavity within the mold that forms the bladder. However, in the rejection above, Gasbarro is only used as an example of a blow molding process involving placing the parison in a mold where it is bent to conform

Art Unit: 1733

the contours of the mold. Swigart is directed toward a bladder (Figure 3A) formed by a blow molding process. One skilled in the art would have readily appreciated using Gasbarro's blow molding process to make the bladder of Swigart. This would involve having a mold that corresponds to the shape of the bladder of Swigart (Figure 3A), wherein the contours of the mold would be positioned separate from the cavity within the mold that forms the bladder.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jayme L. Brown** whose telephone number is **571-272-8386**. The examiner can normally be reached on M-F.

Art Unit: 1733

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Jayne L. Brown*

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PRIMARY EXAMINER